

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE FRANKLIN LOPEZ,
Plaintiff,
v.
UNKNOWN,
Defendant.

No. 2:21-cv-1716 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. On September 21, 2021, plaintiff filed a civil rights complaint under 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.¹

Plaintiff names no defendant. Plaintiff claims his EPRD release date has passed, and seeks release from state prison under Proposition 57. (ECF No. 1 at 3-4.)

As discussed below, plaintiff's complaint should be dismissed without prejudice to filing a petition for writ of habeas corpus under 28 U.S.C. § 2254.

¹ Because plaintiff is not seeking relief under 42 U.S.C. § 1983, the court declines to impose the filing fee for bringing a civil rights action.

1 Discussion

2 “Challenges to the validity of any confinement or to particulars affecting its duration are
3 the province of habeas corpus.” Hill v. McDonough, 547 U.S. 573, 579 (2006) (internal
4 quotation marks and citation omitted). “An inmate’s challenge to the circumstances of his
5 confinement, however, may be brought under § 1983.” Id. On the other hand, a writ of habeas
6 corpus is the appropriate federal remedy when “a state prisoner is challenging the very fact or
7 duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled
8 to an immediate or speedier release from that imprisonment.” Preiser v. Rodriguez, 411 U.S. 475,
9 500 (1973); Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam).

10 Here, plaintiff seeks release from state custody, and therefore such claim must be brought
11 in habeas. Further, although a district court may construe a habeas petition by a prisoner
12 attacking the conditions of his confinement as a civil rights action under 42 U.S.C. § 1983, see
13 Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the opposite is not true. A civil rights
14 complaint seeking habeas relief should be dismissed without prejudice to bringing it as a petition
15 for writ of habeas corpus. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995)
16 (“When the intent to bring a habeas petition is not clear, . . . the district court should not convert a
17 defective section 1983 claim into a habeas petition.”). Plaintiff’s civil rights complaint does not
18 express an intent to bring a habeas claim.

19 Moreover, plaintiff is required to exhaust state court remedies prior to filing a habeas
20 petition in federal court. The exhaustion of state court remedies is a prerequisite to the granting
21 of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the
22 exhaustion requirement by providing the highest state court with a full and fair opportunity to
23 consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270,
24 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021
25 (1986). In his complaint, plaintiff claims he exhausted his administrative remedies by filing a
26 grievance, but does not indicate that he exhausted his state court remedies by raising habeas
27 claims in the California Supreme Court.

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Therefore, this action should be dismissed without prejudice to plaintiff filing a petition for habeas corpus pursuant to 28 U.S.C. § 2254.²

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.
2. The Clerk of the Court is directed to assign a district judge to this case.

Further, IT IS RECOMMENDED that this action be dismissed without prejudice to plaintiff filing a petition for habeas corpus pursuant to 28 U.S.C. § 2254.

These findings and recommendations are submitted to the United States District Judge

assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 4, 2021

Kendall J. Newman
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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² Plaintiff is cautioned that the habeas corpus statute imposes a one year statute of limitations for filing non-capital habeas corpus petitions in federal court. 28 U.S.C. § 2244(d).